Some REASONS *humbly offered to the King, Lords, and Commons, in Parliament, by* Wa. Williams *of the* Middle-Temple *Esq; for passing the Bill Entitled, An Act for the better Reviewing of Causes in Chancery, and other Courts of Equity.*

THE Enacting part of the Bill, is, that instead of Rehearings, and Bills of Review, in the same Court where the supposed Erroneous, or Unjust Order or Decree was made, the Cause upon Petition and Entry into Recognizance to perform the Decree, and pay Costs if affirm'd, shall be Reheard, and the Order or Decree Review'd, by the Justices of the King's Bench, and Common Pleas, and Barons of the Exchequer of the degree of the Coif, if the Order or Decree be of any Court but the Exchequer, and if of the Exchequer, then the Justices of the King's Bench, and Common-Pleas only, or any Five of them, whereof one of the Chiefs to be one, and they shall Reverse, Alter, or Affirm, and send their Decree into the Court, where the first Decree was made, to be put in Execution.

The *REASONS*.

1. This sort of Rehearing and Review is in nature of an Appeal in the Intervals of Parliament, and it is necessary there should be such an Appeal, because the Chancery, and other Courts of Equity, may force Obedience to such Decrees as may be Erroneous or Unjust, in the Recess of a Parliament, though Parliaments should sit as frequent as they have done for these Three Years last past, and if Money be paid in Obedience to such a Decree, it may be the Party that gets it may run beyond Sea, or otherwise abscond, become Unsolvent, or Die without Assets, before the Appeal in Parliament can be determin'd, and if the Decree Appeal'd from should be Revers'd, there could be no Restitution in such a Case, and besides it is a great wrong to a Man to be forc'd to pay his Money in obedience to an Unjust Decree, though he were sure the Party that got it should continue able to make Restitution for having parted with his Money, and perhaps his all, he may not be able to prosecute the Reversal of that Decree, or at least wise very slowly.

2: There's no Court in *England* that I know of, nor perhaps in any other part of the World, inferior to the supream Court of each Nation, and which exerciseth a Jurisdiction over Men's Estates only, but there may be an Appeal, or a Writ of Errour, (which is in nature of an Appeal,) at all times had, against their Errours, except the Court of Chancery, and such like Courts of Equity. Nor is any Man Compellable to part with his Estate, unless he will himself, without the Concurrence of Two of those Courts at least: But whether there ought to be more Confidence put in the Court of Chancery, or any other Court of Equity, as to matters of Equity, then there is in the Courts of Law, as to matters of Law, the common Complaint of the Kingdom may in a great Measure inform.

Its Objected, and its true, that sometimes Writs of Errour, and Appeals are brought for meer delay, but its worthy Consideration, if there were not such a Remedy, whether there might not be more Wrong done then there is:

3: A further Reason for passing this Bill. is this, that it is in effect but an affirmance of the Common Law, and Ancient usage of the Kingdom, as to the method of proceedings in Equity, and it is not an unusual thing when the Common Law hath not its usual Course to have it affirm'd and inforced by making Acts of Parliament to the same, or the like effect.

That by the Common Law, or Common Usage of the Kingdom heretofore, some of the Judges of the Common Law were either Consulted with, and their Advice followed, or else they had the Reviewing of Chancery Decrees, we have as great an Evidence as for any thing else of the Common Law, *viz.* The unanimous Opinion of all the Judges of *England*: and the reason why their Opinion in such Cases ought to be allow'd, may be this, because it was a long time before Men began to put the Common Laws of *England* into Writing, as appears by *Bracton*, *fol.* 1. and the knowledg of them was continued by Tradition only, until they came by degrees to be Reduc'd to Writing, and as to such as are Reduc'd to Writing, the Rule ought to be *Sit Liber Judex*, and if it were so observed, we should every Generation more then another arrive to certain and known Laws, and not for ever Labour under the Slavery mention'd by my Lord Chief Justice *Cooke* in his Fourth *Instit.* 246. *Misera est servitus ubi jus est vagum aut Incognitum.*

In *Rolls* Reports 2*d* part, in the Case of *Hudson* against *Middleton*, *fol.* 434. It is said and admitted, that in former times the Chancellor us'd to send for the Judges to know when Equity was to be admitted against the Common Law, for, (as is there said) the Common Law is not to be alter'd for every Fancy.

In *Rolls* Reports, 1*st* part, in *Vaudrey* and *Paunells* Case, *fol.* 331. you may find that *Cooke* then Chief Justice said, he had perus'd his Books, and that in the 42*d* and 43*d* Year of Queen *Elizabeth*, in a Sute in Chancery between the Countess of *Southampton* and the Earl of *Worcester*, and others, for the Mannor of *Heningham*, it was Resolved by all the Judges of *England* under their Hands, That when a Decree was made in Chancery, the Queen, upon Petition to Her. might Referr it to the Judges, but not to any other, to Examine and Reverse the Decree, and that the then Lord Chancellor did Agree to that Resolution.

I do not know of any greater Evidence there can be of any thing at the Common-Law, then the unanimous Opinion of all the Judges, with the Concurrence of the Chancellor, and in a matter that some others have thought an Abridgment of their Power and its being a thing admitted, without any Contradiction for ought appears, and confirm'd by a long continued Practice, afterwards for several Reigns, untill the Government it self was overturned, as hereafter shall be shewed.

But some have in these latter days made an Objection against that Resolution, that it might be a partial Opinion of the Judges, to inlarge their own Power, in that, they say, the Reference ought to be to the Judges, and no other, but for that part of the Resolution there is this ground, that in the First Year of *Richard*

Richard the 2d the Commons in Parliament pray'd the King, that no Suite between Parties ſhould be ended before any Lords, or other of the Counſel, but before the Juſtices only, which the King granted, as appears, *Rot. Parl.* 1 *Ric.* 2d: *Nu.* 87.

That this Courſe of the Kings Referring the Examination of Complaints againſt Decrees in Chancery, was frequently practiſed, though ſometimes the Reference was to the Chancellor and ſome of the Judges, yet there was moſt times a Majority of Judges, and this in the Reigns of Queen *Eliz.* King *James* the 1ſt. and King *Charles* the 1ſt. as appears by ſeveral Orders, yet to be ſeen in the Regiſters Office in Chancery, that appear to be made by Vertue of ſuch Refferences of which ſome are as followeth, *viz.* 21. of *June*, 2. *Jac.* 1. Between *Chamberlain* and *Bubb*, 24 of *Novem.* 3. *Car:* 1. between *Barker* and *Unwyn* 12 of *Novem* 7. *Car.* 1. *Inter Penington* and *Holmes*, and in 15. *Car.* 1. *Roti pat. Nu.* 5. in *Dorſ.* there is a Commiſſion to Review a Deceee *Inter Harvey* and *Langham*, but it was not to any Judges, but to the Archbiſhop of *Canterbury* &c.

Soon after, The unhappy Wars began and the Powers that afterwards prevail'd, did not think fit the Chancery ſhould be without an immediate Appeal, but *An.* 1654 ordain'd that Decrees in Chancery, ſhould be Reveiwed by Two Judges out of each Common-Law-Court in *Weſtminſter Hall*, though there were then Three Commiſſioners for the Cuſtody of the great Seal, but that Ordinance fell to the Ground upon King *Charles* the 2ds. Reſtoration, not for any Inconvenience that was in it, but for want of a Lawful Power in the Creation of it, and there was no abſolute need to confirm it at the Reſtoration of King *Charles* the 2d. for thereby the Monarchy was reſtored in all its Parts and Powers, and conſequently, that Method of proceeding againſt unjuſt Decrees, as well as any other was reſtored in Law, though not in Practice; and one great Reaſon that it was not practiſed, might be, that there having been about Twenty Years interruption in the Government; that way of being Relieved againſt Errors in Chancery might be unknown to moſt, but it was not long before the Kingdom became ſenſible of the need of ſuch a Remedy in the Intervals of Parliament, in ſo much, that the Commons in Parliament the 28th of *May*, 1657. Reſolved, that they would on *Tueſday* following, take into Conſideration, the increaſe of the Juriſdiction of the Court of Chancery, and the Remedy againſt unjuſt Decrees there, but that Parliament was Prorouged before any thing could be done in purſuance of that Reſolution.

About 1681. there were ſeveral Petitions to King *Charles* the 2d. Complaining of Decrees in Chancery, and praying His Maieſties Reference to the Judges, and His Majeſty referred it to His Counſel Learned in the Law, to certifie their Opinion touching the Legality of that Courſe, and Five to one were of Opinion, that it was a lawful Courſe, but there was great Artifice uſed to prevent a Report thereof to the King, which would be too long, and perhaps not material to be here Recited, and in the laſt Seſſion of Parliament, and in the Seſſion before there was conſiderable Progreſs made in this matter.

In *Cookes* 4 *Inſtit fo.* 240. you may find it ſaid, that an Appeal is ſo natural a Defence, that no Prince or Power can take it away. I ſuppoſe that Author means it cannot, *de Jure* be taken away, but I think *De Facto*, the immediate Appeal hath been taken away for too long a time.

As Men in all Governments ought to ſubmit to their Condemnation, be it in Perſon, or Eſtate, when done regularly, for it muſt be ſuppoſed Juſt, ſo on the other hand ſuch Condemnation by irregular Means is unjuſt, and therefore very uneaſily ſubmitted to.

I doubt not but it will be yielded to me, that thoſe in whoſe Power it is to have a regular Courſe Revived, or have a new Law made upon occaſion in Adminiſtration of Juſtice, are equally guilty before the great Judge of the whole Earth with thoſe that pronounce an unjuſt Sentence, if they do not their endeavour to procure a fit Remedy:

And ſince we are in a Kingdom of Chriſtians that ſhould regard the Word of God, whatever they do by the Word of Man, it may not be improper to repeat in ſome meaſure, how God Reſents and puniſheth for want of Juſtice, for which purpoſe ſee

Jeremiah, *the* 5. 15.

Loe, I will bring a mighty Nation upon you from far, O Houſe of Iſrael, ſaith the Lord, &c.

The Reaſon (*inter alia*) is expreſſed, *verſ:* 28. 29.

——— *They judge not the Cauſe, the Cauſe of the Fatherleſs, yet thry proſper; and the Right of the Needy they do not Judge, ſhall I not viſit, for theſe things, ſaith the Lord, ſhall not my Soul be avenged on ſuch a Nation as this.*

To Repent and Amend, is the known way to avert Gods Judgments.

I humbly conceive, That the Method of Proceeding, propos'd by the Bill, will be a ſpeedier and cheaper Remedy by Two Parts in Three, and a ſurer way of Relief, then the Re-hearings, and Bills of Review now in uſe in the Chancery, *and other Courts of Equity, which, here to ſhew in Particular, would be too long; but I ſhall be ready to do it at any time, to any that deſire it; and beſides, that it no ways hinders an Appeal to the Lords in Parliament.*

480.c.8
64.iv.11
41.i.19